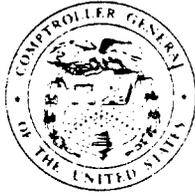


DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

60008

FILE: B-183607

DATE: October 2, 1975

MATTER OF: White Plains Electrical Supply Co., Inc.

97856

DIGEST:

1. Requirement that bidders submit manufacturer's specifications and indicate on the bid the manufacturer and catalog number of item offered is informational in nature and failure to comply should not have required rejection of bid since procured item was not unusually complex, was adequately described in solicitation and record did not provide adequate justification for such requirement.
2. Requirement for submission of manufacturer's specifications with bid to show that product offered conforms to specification is not justified since solicitation did not advise bidders with particularity both as to extent of detail required and purpose to be served by such requirement.
3. General statement by bidder that item offered would be fully color coded rather than a statement of compliance with one of the precise color coding methods specified by agency did not require rejection of bid since in the absence of an express exception to methods specified by agency bidder's general statement must be construed as consistent with solicitation requirements.

White Plains Electrical Supply Co., Inc. has protested award of a contract for a definite quantity of electrical cable under Solicitation No. 200-B-4465, issued by the U.S. Department of Interior, Bureau of Reclamation. The protester argues that it was improperly declared nonresponsive because it failed to submit descriptive data called for in the invitation for bids (IFB) and asserts that the requirements for such data should have been waived as informalities or minor irregularities.

The solicitation requested bidders to indicate on the schedule the manufacturer, catalog number and price of the items bid in the blank space provided. Bidders were advised at the conclusion of the list of items in the schedule, as follows: "IMPORTANT: Please [see] requirements of Paragraph A-8 of the Special Conditions for submittal of data." In this connection, the solicitation provided:

"A-8. Data to be furnished by offerors. a. The cable to be furnished shall be completely identified. Manufacturer's data shall be furnished with the manufacturer's specifications and evidence that the cable meets the Insulated Power Cable Engineers Association (IPCEA) Standards. Data, and descriptive literature are required to establish, for the purpose of offer, evaluation and award, details of the product the offeror proposed to furnish to show that the product offered conforms to the specifications.

"b. Failure of the data and descriptive literature to show that the product offered conforms to the specifications and other requirements of this solicitation will require rejection of the offer. Offers will be disregarded if they are made ambiguous in any material respect by the contents of data, or descriptive literature whether such information is solicited or unsolicited. Failure to furnish the data or descriptive literature by the time specified in the solicitation will require rejection of the offer, except that if the material is transmitted by mail and is received late, it may be considered under the provisions for considering late offers, as set forth elsewhere in this solicitation."

The justification for requiring the submission of data is explained in the statement of the Regional Procurement Officer as follows:

"The control cable is required to meet the standards of the IPCEA and to have a temperature rating of 90°C. This rating is not standard for polyethylene insulated cable under Paragraph 3.9 of the Insulated Power Cable Engineers' Association (IPCEA) Standards, and literature available in this Office indicates that some manufacturers do not list this cable as being available at the 90°C temperature rating. It is considered a specialized requirement.

"Because this cable is not a standard item with some manufacturers and because we are unable to determine from data available in this Office that these firms do supply this item, it is deemed necessary to require that all cable offered be completely identified. Manufacturer's data and specifications are required to establish details of the product offered to show that it conforms to the specifications."

The bid of White Plains was rejected since the bidder did not indicate the manufacturer's name and catalog number and since the descriptive literature furnished with the bid did not specifically describe one of the two specified IPCEA methods for color coding but merely provided that the cable offered would be "fully color coded."

While we need not decide here whether information regarding manufacturer and catalog number constitutes descriptive literature as defined in Federal Procurement Regulations (FPR) 1-2.202-5(a) (1964 ed.), it is reasonably clear from the solicitation that such identification was intended to be a material requirement. The Department takes the position that identification of the manufacturer and "catalog number" is a material requirement of the bid "since all manufacturers do not make a standard cable item meeting the requirements of the specifications, * * * the quality of the product is directly related to what the required data would show." The Department, therefore, implies that in the circumstances it would not be able to ascertain the quality of the item bid without the required data. However, in our opinion, the Department's position begs the question since an unqualified bid normally is sufficient to bind the bidder provided the solicitation's specifications adequately describe the Government's actual requirements. The fact that all manufacturers may not offer standard cable with a temperature rating of 90 degrees C., in our opinion, does not detract from the adequacy of that performance characteristic which is a sufficiently detailed description of the Government's requirements and leaves nothing for the bidders to describe. Also, electrical cable does not appear to be an unusually complex item justifying the submission of descriptive literature. FPR 1-2.202-5(b). Therefore, the record does not establish that a statement of the manufacturer's name and catalog number is necessary to assure that bidders understand the requirements of the specifications. In the circumstances the failure to furnish such information could not affect the obligation of the bidder, in the event of award, to furnish supplies acceptable to the Government. Thus, we find the requirement to list the manufacturer and catalog number to be informational in nature and the failure to provide it should not have required rejection of the bid as nonresponsive. 49 Comp. Gen. 553 (1970).

It appears that the solicitation requirement for submission of manufacturer's specifications "to show the product offered conforms to the specifications," is subject to the same objection. Moreover, even if an acceptable product could not have been procured without descriptive literature, which does not appear to be the case, a requirement for such literature should advise bidders with particularity both as to the extent of the detail required and the purpose it is expected to serve. 46 Comp. Gen. 1, 5 (1966). In this case the record

shows that the cable offered by the successful bidder was not listed in a printed catalog, and since the manufacturer's descriptive literature was unavailable, that bidder furnished excerpts from the IPCEA standards (specified by the Government) with applicable paragraphs checked for compliance. Thus, it would appear that the successful bidder merely reiterated the controlling specification and the procuring activity viewed this as satisfying the descriptive literature requirements of the solicitation. In this connection, we have consistently held that if the requirement for descriptive literature can be met by parroting back the specifications provided in the solicitation, the legitimacy of that requirement is questionable since such information would not appear to be necessary to determine the responsiveness of the bid. 46 Comp. Gen. 315, 318 (1966).

The fact that the literature submitted by White Plains stated that the cable offered would be "fully color coded" rather than specifying the precise method to be used should not have caused the rejection of the bid. In the absence of an express exception to the methods specified in the solicitation, the bidder's statement that the cable would be color coded must be reasonably construed as consistent with the methods prescribed in the solicitation. Aristo Company, 53 Comp. Gen. 499 (1974). Also, White Plains submitted a certification with its bid stating that the supplies offered complied in every particular with the advertised specifications.

Accordingly, we believe bids should not have been rejected as nonresponsive for failure to provide data specified in paragraph A-8. Since we are advised that performance of the contract awarded has been completed we do not recommend termination action. However, the Department should take appropriate measures to insure that these deficiencies do not reoccur.


Deputy Comptroller General
of the United States